UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

AUTO WAREHOUSING CO., INC.

Employer

and **CASE 7-RC-22273**

LOCAL 614, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

and

SHOPMEN'S LOCAL UNION NO. 508, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS, AFL-CIO

Intervenor

and

LOCAL LODGE 698, DISTRICT LODGE 60, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

Party to the Contract

APPEARANCES:

Thomas M. Triplett, Attorney, of Portland, Oregon, for the Employer.
Wayne A. Rudell, Attorney, of Dearborn, Michigan, for the Petitioner.
Joseph F. Lyscas, of Wayne, Michigan, for the Intervenor.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:[1]

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organizations involved claim to represent certain employees of the Employer.[2]

4. For the following reasons, a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

This case poses the question of whether a disclaimer of interest by an incumbent union removes its contract as a bar to the conduct of an election. The Petitioner urges that the disclaimer overcomes any bar and that an election should be held. The Employer contends that the disclaimer is ineffective. For reasons explained below, I find that the disclaimer is valid and that a question concerning representation has been raised warranting the conduct of an election.

The Employer transports vehicles between manufacturers and dealerships, using 30 staging areas across the country (known as "yards") for this service. About early 2002, it purchased a facility in Lake Orion, Michigan, from Leaseway, a separate company whose yard employees had been represented by the Petitioner, Local 614, International Brotherhood of Teamsters, AFL-CIO

[1] The Employer and Petitioner submitted briefs that were carefully considered.

[2] Despite Teamsters Local 614's contrary arguments, I find, based on the evidence contained in the record and set forth below, that Local Lodge 698, District Lodge 60, International Association of Machinists and Aerospace Workers, AFL-CIO meets the statutory criteria for a labor organization.

(hereafter Teamsters Local 614).[3] The Employer already operated four other yards in southeastern Michigan, all of which are unionized.[4]

The Employer recognized IAM Lodge 698 as the bargaining agent of its Lake Orion yard employees about February 23, 2002.[5] The Lake Orion facility began operations under the Employer's auspices about March 4. By March 5, Corporate Human Resource Director Julie MacDonald and IAM Lodge 698's representative Don Riffee succeeded in negotiating a collective bargaining agreement covering Lake Orion's yard staff. A one-page memorandum bilaterally executed on March 5 stated that the parties had reached an agreement as set forth in certain attachments. The record contains the one-page memorandum, but none of the referred attachments. The memorandum further states that the "attached documents and all other mentioned documents" -- all missing from the record herein -- would constitute the parties' agreement, upon notice that the agreement had been ratified by IAM Lodge 698's employee members.[6]

IAM Lodge 698 conducted a vote and obtained ratification of the contract about March 6. The Employer was duly notified.[7]

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[3] The business address of the yard known as "Lake Orion" is 1801 Brown Road, Auburn Hills, Michigan.

[4] Local Lodge 698, District Lodge 60, International Association of Machinists and Aerospace Workers, AFL-CIO (hereafter IAM Lodge 698) represents yard employees at facilities in Woodhaven and Detroit, while the Intervenor, Shopmen's Local Union No. 508, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL-CIO (hereafter Iron Workers Local 508), represents yard workers at two other Woodhaven and Detroit facilities.

[5] Dates henceforth refer to 2002, unless noted.

[6] The circumstances of the Employer's recognition of and bargaining with IAM are subjects of an unfair labor practice complaint in Case 7-CA-45024 dated June 28 and scheduled to be tried October 15. Although I take administrative notice of the issuance of the complaint, I take no notice of evidence adduced during the investigation of that case that is outside this record. In that connection, I note that the hearing officer properly excluded evidence proffered by Petitioner concerning the unfair labor practice matters, an effort that Petitioner renewed in its post-hearing brief and that I must deny. While an administrative law judge in Case 7-CA-45024 will decide, *inter alia*, whether IAM enjoyed the support of an uncoerced majority of employees at the time the Employer recognized it as bargaining agent at the Lake Orion facility, in resolving the contract-bar issue in the instant case I must and do follow the Board's decades-old practice of presuming the legality of the agreement urged as a bar and therefore may not consider evidence of whether, at the time the contract was executed, a majority of employees covered by the contract had designated IAM as their bargaining representative. ***John Deklewa & Sons***, 282 NLRB 1375, 1395 (1987), enfd. sub. nom. ***Iron Workers Local 3 v. NLRB***, 843 F.2d 770 (3rd Cir. 1988), cert. denied 488 U.S. 889 (1988); ***Wilmington Terminal Warehouse***, 68 NLRB 299, 302 (1946).

[7] Despite an inference that could be drawn to the contrary based on one witness's testimony, the weight of the probative evidence is that ratification occurred.

About March 14, authorized representatives of the Employer and IAM Lodge 698 executed an 18-page collective bargaining agreement effective by its terms March 4, 2002 through March 4, 2005. The signatures are undated and no execution date is recited in the document. However, no witness challenged testimony that the agreement was signed about March 14. More significantly, no party contends that the agreement was executed on or after July 1, the date of the filing of the petition in this case.

On April 30, Teamsters Local 614, through its international union, initiated proceedings against IAM Lodge 698 under Article XX of the AFL-CIO Constitution's no-raiding procedures. Teamsters Local 614 and IAM Lodge 698 adhered to their opposing claims to organize the Employer's Lake Orion yard workers during a mediation conference held about May 21. Accordingly, AFL-CIO President John Sweeney issued notice on May 21 that a hearing and determination of the matter would take place on June 26.

IAM Lodge 698 mooted the June 26 Article XX hearing, which was never held, by disclaiming interest. In fact, the instant record contains four IAM Lodge 698 disclaimers. On June 11, IAM's International President R. Thomas Buffenbarger served notice on both the AFL-CIO and the International Teamsters that IAM Lodge 698 disclaimed interest in the Lake Orion workforce at issue. On June 12, IAM Lodge 698 notified the Board's Regional Office that it wished to disclaim interest in said unit "upon notification from [the Region] that such approval is granted." A letter dated July 11 from IAM Lodge 698 to the Board's Regional Office asked that, in accordance with its June 12 disclaimer, IAM Lodge 698 no longer be considered a party to the instant representation case. Finally, IAM Lodge 698 advised the Board in writing on July 12 that the disclaimer of interest embodied in its previous letters was a result of its "compliance" with Article XX.

There is no evidence that IAM Lodge 698 has acted inconsistently with its disclaimer.

On July 12, Iron Workers Local 508 advised the Board's Regional Office that it had an interest in this case. It intervened, participated in the hearing, and introduced a labor contract covering the Detroit and Woodhaven yards effective April 2, 2000.[8] Iron Workers Local 508 offered no other evidence, but explained through its representative at the hearing that the union asserted a right to represent the Lake Orion yard workers by virtue of an accretion clause in its contract. After

[8] The document in the exhibit file purporting to be this contract is incomplete. Based on its table of contents, the admitted exhibit omits half of the contract's pages, including the duration clause and the signature page.

the close of the hearing, by letter dated July 23 to the undersigned, Iron Workers Local 508 also disclaimed interest in the instant case.[9]

The Employer, as the party asserting the existence of contract bar, bears the burden of proof. ***German School of Washington, D.C.***, 260 NLRB 1250, 1256 (1982); ***Roosevelt Memorial Park***, 187 NLRB 517, 518 (1970). The Board's basic substantive and formal requirements for contract bar are described in ***Appalachian Shale Products Co.***, 121 NLRB 1160 (1958). The contract must be a written product of collective bargaining, setting forth substantial terms and conditions of employment and covering the same employees as those involved in the petition. It must also be signed by all parties prior to the filing of the rival petition. ***DePaul Adult Care Center***, 325 NLRB 681 (1998).

The parties focused their evidence and arguments on the issue of disclaimer. Indeed, no party argues that IAM Lodge 698's contract is technically infirm under ***Appalachian Shale***.[10] I find that the one-page memorandum signed July 5 cannot serve as a bar, because, without the accompanying attachments, it does not outline terms and conditions of employment. However, the 18-page agreement satisfies the formal requirements of ***Appalachian Shale***. The fact that it lacks an execution date does not undermine its bar status, since extrinsic evidence establishes the signing date as March 14, well before the filing of the petition. ***Cooper Tanks & Welding Corp.***, 328 NLRB 759 (1999); ***Western Roto Engravers***, 168 NLRB 986, 987 (1967). Accordingly, I find that it would constitute a bar, but for the effect of the union's disclaimer. [11]

The Board will not allow a contract to act as a bar when the contracting union has validly disclaimed interest in representing the covered employees. ***American Sunroof***, 243 NLRB 1128, 1129 (1979). To be effective, a disclaimer must be clear, unequivocal, and made in good faith. ***VFL Technology Corp.***, 332 NLRB No. 159, slip op. at 1 (Dec. 15, 2000). The Board's willingness to honor a

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[9] I take administrative notice of this letter. I disregard, as either duplicative or *dehors* the record, a packet of apparently related material submitted after the hearing by Teamsters Local 614. Three letters in the packet are surplusage, two being documents already admitted into evidence and another being a copy of the Iron Workers' July 23 disclaimer, addressed to me, of which I am taking notice. Three additional letters, neither prepared by nor sent to the Regional Office, have not been authenticated or properly moved into evidence, and are therefore rejected. Board's Rules and Regulations, Section 102.68; see ***Today's Man***, 263 NLRB 332, 333 (1982).

[10] Teamsters Local 614 does contend that ratification of the contract was an explicit, and unmet, condition precedent. I disagree. Prior ratification is required in order to give bar status to a contract only if it is an express condition of contractual validity. ***International Paper Co.***, 294 NLRB 1168 fn. 1 (1989). The 18-page agreement does not mention ratification at all. Further, I find that ratification occurred.

[11] On the other hand, Iron Workers Local 508's contract does not pass muster, as it is only a partial document and there is no evidence in the record as to its signing date.

disclaimer, absent special circumstances or actions by the disclaiming union that are inconsistent with its disclaimer, has been established in a long line of cases. E.g., ***Production and Maintenance Union Local 101 (Bake-Line Products)***, 329 NLRB 247, 248 (1999); ***Plough, Inc.***, 203 NLRB 121 (1973); ***Manitowoc Shipbuilding***, 191 NLRB 786 (1971); ***National By-Products Co.***, 122 NLRB 334 (1958); see also ***WTOP, Inc.***, 114 NLRB 1236 (1955) (disclaimer trumps one-year certification rule). Although it has not been explicitly overruled, the Board's holding in ***East Manufacturing***, 242 NLRB 5 (1979), seeming to honor disclaimers only from defunct unions, is anomalous and irreconcilable with the weight of Board authority.

Exceptions to the general rule arise under the good-faith requirement. Thus, no effect is given to a disclaimer that is the product of a collusive pact between the disclaiming and petitioning unions. E.g., ***Dominick's Finer Foods***, 308 NLRB 935 (1992), enfd. 28 F.3d 678 (7th Cir. 1994); ***Mack Trucks***, 209 NLRB 1003 (1974). Other collusive dealings between unions are treated similarly, resulting in like findings that the original contract acts as a bar. ***Avne Systems***, 331 NLRB 1352 (2000) (sham disaffiliation); ***Gate City Optical Co.***, 175 NLRB 1059 (1969) (sham defunctness).

For these purposes, collusion is usually evidenced by a tactical maneuver, sham, or deception of some kind. However, the Board specifically regards participation in no-raid proceedings under Article XX to be non-collusive. ***VFL Technology Corp.***, supra, slip op. at 2. I cannot adopt the Employer's proposition under ***Mack Trucks*** that pre-arbitration settlement of an Article XX proceeding is "collusive." No case, including ***Mack Trucks***, bases the efficacy of a disclaimer upon a distinction between arbitrated and mediated Article XX outcomes. The Employer's theory is unsupported.

There is no cognizable reason to dishonor IAM Lodge 698's disclaimer. It was the product not of collusion, but an adversarial contest between IAM and the Teamsters played out in the AFL-CIO's forum. It has not been shown to be a sham. It has not been contradicted by inconsistent action on the part of IAM Lodge 698. The policy underlying the contract-bar rule is a salutary one of fostering stability in bargaining relationships. Under these circumstances, however, the purposes of the Act would not be well served by rejecting IAM Lodge 698's arm's-length disclaimer and thereby leaving employees with no representation at all for the remainder of the contract term. ***American Sunroof***, supra, at 1129 fn. 3. Accordingly, I shall direct an election.

5. I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees of Auto Warehousing Co., Inc., at its facility located at 1801 Brown Road, Auburn Hills, Michigan, including prep employees, rail load employees, rail unload employees, bin checker/locator employees, shagger employees, rail shagger employees, and lead persons; but excluding office clerical employees, managerial employees, professional employees, and guards and supervisors as defined in the Act.

Those eligible to vote shall vote whether or not they wish to be represented for collective bargaining by Local 614, International Brotherhood of Teamsters, AFL-CIO.

Dated at Detroit, Michigan, this 7th day of August, 2002.

/s/ William C. Schaub, Jr.
William C. Schaub, Jr., Regional Director
National Labor Relations Board, Seventh Region
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226

347-4030-6712

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of the undersigned among the employees in the unit found appropriate at the times and places set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

LOCAL 614, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

LIST OF VOTERS[12]

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. ***Excelsior Underwear, Inc.***, 156 NLRB 1236 (1966); ***NLRB v. Wyman-Gordon Company***, 394 U.S. 759 (1969); ***North Macon Health Care Facility***, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **August 14, 2002.** No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570.** This request must be received by the Board in Washington by **August 21, 2002**.

Section 103.20 of the Board's Rule concerns the posting of election notices. Your attention is directed to the attached copy of that Section.

[12] If the election involves professional and nonprofessional employees, it is requested that separate lists be submitted for each voting group.